IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30/04/2003

CORAM

THE HONOURABLE MR. JUSTICE P. SHANMUGAM
and
THE HONOURABLE MR. JUSTICE S.K. KRISHNAN

Habeas Corpus Petition No.2195 of 2002

Bilal .. Petitioner

-Vs-

1. State of Tamil Nadu, rep. by
the Secretary to Government,
Prohibition & Excise Department,
Fort St. George,
Chennai-600 009.

2. The District Magistrate and
District Collector,
Tiruvannamalai District,
Tiruvannamalai. .. Respondents

PRAYER : Petition under Article 226 of the Constitution of India seeking to issue a Writ of Habeas Corpus calling for the records relating to the detention order passed by the second respondent in D.O. No.84 /2002-C2 dated 27.8.2002, set aside the same and consequently direct the respondents to produce the body or person of the detenu Sathik Basha, now detained in the Central Prison, Vellore before this Honourable Court and set him at liberty forthwith.

!For Petitioner : Mr. C.M. Gunasekaran

^For Respondents : Mr. A. Navaneethakrishnan,
Addl. Public Prosecutor.

:O R D E R

P. SHANMUGAM, J.
The brother of the detenu has filed the above Habeas Corpus Petition praying to quash the order of detention dated 27.8.2002 passed by the second respondent under Section 3(1) of Tamil Nadu Act 14 of 1982. The detenu was branded as a 'Goonda'.

2. The brief facts of the case are as follows :-
The detenu is involved in 18 cases of offences mostly against

property, namely house breaking and theft of jewellery and other items. He had been convicted in 16 cases and the other two cases are pending trial. While so, on 3.8.2002, one Thiru. Janakiraman of Chetpet, Vandavasi preferred a complaint, inter alia, contending that while he was going to the auto stand for work, the detenu suddenly dashed on him and held him by pulling his shirt. When the complainant questioned this, the detenu suddenly took out a knife and by threatening to kill him, snatched Rs.150/- from his shirt pocket. When the complainant attempted to prevent this, the detenu assaulted him by using a knife and caused bleeding and lacerated injuries on the complainant. On his shouts for rescue, the detenu further snatched the complainant's wrist watch and threatened the public who tried to come to the rescue of the complainant by showing the knife. The public passing by the road, seeing his deadly activities, ran away in all directions out of fear, the shop owners closed their shops and the traffic in that area was paralyzed. Taking advantage of this confusion, the detenu escaped with the cash and the wrist watch. The complainant came to the police station and gave an oral complaint. The Inspector of Police registered a case in Vandavasi South Police Station Crime No.156 of 2002 under Section 397 of the Indian Penal Code and sent the complainant to the Government Hospital for treatment. On further investigation, the Inspector of Police arrested the detenu on 6.8.2002 at 1100 hours at Vandavasi-Chetpet Road near Anjukannu Varavathi. The detenu gave a voluntary confession statement. The knife used to assault the complainant and the wrist watch snatched from him were recovered from the possession of the detenu and the recovery of the motorcycle revealed that it was stolen from Pondicherry and the Inspector also subsequently recovered many of the stolen properties under the cover of a mahazar. The detenu was produced before the Judicial Magistrate, Vandavasi on 7.8.2002, who remanded him to judicial custody. The seized articles were sent to the Court Under Form-95. The investigation of the case was not completed and it was found that the offence relates to endangering human lives by committing robbery and criminal intimidation punishable under Chapters XVI and XVII of the Indian Penal Code. It was noticed that the detenu was already involved in 18 cases, out of which he has been convicted in 16 cases and the other two cases are pending trial. The investigation in those cases revealed the violent activities of the detenu and the detenu was found to have been habitually committing the offences of house breaking by night and day and committing theft and robbery by endangering human life and personal safety of the public repeatedly and indulging in brutal activities. The activities of the detenu had created a feeling of insecurity in the minds of the public in the area and thus disturbed the normal life of the community, the tranquility and tempo of the society were also paralyzed and public order was affected to a great extent. In these circumstances, from the materials placed before the detaining authority, he was satisfied that there was a compelling necessity to detain the detenu with a view to prevent him from indulging in such prejudicial activities in future and accordingly passed the impugned order of detention. The said order is now under challenge.

3. Learned counsel for the petitioner made detailed submissions, the summary of which is given below :

i) There is a discrepancy in reference to the number of items of

jewellery stolen as per the First Information Report in the ground case and the recoveries made.
ii) There is non-application of mind on the part of the detaining authority in considering the possibility of the detenu committing the crime.
iii) There is discrepancy in reference to the time of arrest.
iv) The representation of the detenu stating that the cases were foisted on him was not considered.
v) The Tamil version of pages 2 to 20 were not supplied.
vi) There is delay in disposal of the representation of the detenu.

For all these reasons, learned counsel prays for quashing the impugned order of detention.

4. Learned Additional Public Prosecutor submits that the discrepancy in reference to the recovery of stolen property is immaterial, since though the complainant might have referred to a particular quantity of jewellery stolen, it may turn out to be more or less. In any event, according to him, those individual recoveries under the mahazar in reference to the ground case and as to the quantity are not relied upon documents so as to say that there is non-application of mind. According to him, the word "if" found in paragraph 5 of the detention order is superfluous and in the facts and circumstances of the case, it cannot be stated that because of this, there is non-application of mind. He therefore submits that the detenu is a notorious, habitual offender and that a cursory reading of the 18 adverse cases registered against him would clearly reveal that this is a fit case where preventive detention has to be invoked and has been rightly invoked and hence, the order does not call for any interference.

5. We have heard the counsel, gone through the records and considered the matter carefully.

6. The detaining authority has stated in the grounds of detention that the Inspector of Police, Vandavasi Circle has recovered stolen properties in Vandavasi South P.S. Crime Nos.119/20022 u/s. 454, 380 IPC and 121/2002 u/s. 454, 380 IPC from the receivers under a cover of mahazar. It is stated that the Inspector of Police has brought the detenu along with the recovered properties at 0930 hours on 7.8.202 and thereafter produced him before the Judicial Magistrate, Vandavasi on the same day. It is also stated that the seized articles were sent to the Court under Form-95 and the investigation of the case is not yet completed. The above statement, in the grounds of detention, did not refer to the actual quantity of stolen jewels recovered in each of the pending case. The crime number in the ground case is 156 of 20 02 registered under Section 397 IPC, whereas the last of the adverse case, Item No.18 is Crime No.121 of 2002 registered under Sections 45 4 and 380 IPC. The First Information Report relating to the said crime number, viz. Cr.No.121/2002 says that the detenu committed the offence of house breaking by day on 2.7.2002 and committed theft of gold jewels and silver ornaments from the house of one K. Shanmugasundaram, all worth Rs.87,000/-. The properties were subsequently recovered. The First Information Report, of course, refers to the total quantity of stolen jewels as about 9 sovereigns. It is true that

in reference to the recoveries based on the mahazars found at pages 44, 45, 46, 47, 48 and 49 of the booklet, nearly 200 grams of jewels seems to have been recovered. As rightly pointed out, these recoveries were effected on the basis of the information given by the detenu and it is more than what was said to have been stolen in Crime No.121/2002. There is no reference to the exact quantity of missing jewels complained of and the recoveries made. What is stated in the grounds of detention is only to the effect that the recovered properties were brought to the police station and produced before the Magistrate. There is no need to go into the details of the exact amount of the recoveries made and the discrepancy, if any, in reference to the particular crime number. All these recoveries were effected in the presence of witnesses and if the cases are under investigation, it has to be found out as to whether these jewels are related to Crime No.121/2002 or Crime No.119/2002 since the case is pending trial. There is no need to seek for a clarification in reference to the alleged discrepancy since that is not the material on which the detention order has been passed. We do not find any substance in the submission that because there is a material discrepancy in reference to the quantity of jewels stolen and the quantity recovered and that there is excess recovery and therefore, the detention order suffers from the vice of nonapplication of mind.

7. Paragraph 5 of the grounds of detention reads as follows :

"I am aware that he (the detenu) has not filed any bail application so far. However, there is an imminent possibility of his filing bail application or move the higher courts for bailing comes out on bail. I am also aware that in such cases, if the bail is granted, after a lapse of some time, there is an imminent possibility of the detenu coming out on bail and if the detenu is let to remain at large, he is likely to indulge in such further prejudicial activities in future as well, and therefore, there is a compelling necessity to pass this order of detention with a view to prevent him from indulging in such prejudicial activities, in future."

The Tamil version of paragraph 5 of the grounds of detention reads as follows :

",th; ,Jtiuapy; $hkPd; kD vija[k; jhf;fy; bra;atpy;iy vd;gij ehd; mwpntd;/ Mdhy; mj;jifa $hkPd; kDitj; jhf;fy; bra;tjw;Fk; cah; epiy ePjpkd;w';fspy; mth; cldoahf $hkPdpy; tpLtpf;fg;gLtjw;Fk; tha;g;g[cs; sJ/ ,j;jifa neh;t[fspy; rpwpJ fhyk; fHpj;J ,tUf;F $hkPd; mspf;fg;gl;L tpLtpf;fg;gl;lhy;. ,dp ,th; nkw;bfhz;L ,j;jifa ghjfkhd eltof;iffspy;